

STATE OF TENNESSEE

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Opinion No. 02-037

HB 3162/SB 3090 - Residency Requirement for Candidates for County Legislative Body - Delegation of Authority to Set Residency Requirement to County Legislative Body - Constitutionality

QUESTION

Whether HB 3162/SB 3090, which delegates the authority to establish minimum residency requirements for candidates to a county legislative body to the county legislative body, violates any provision of the Tennessee or United States Constitution.

OPINION

HB 3162/SB 3090, if enacted, would constitute an unlawful delegation of legislative power in violation of Article VII, Section 1 of the Tennessee Constitution.

ANALYSIS

HB 3162/SB 3090 seeks to amend Tenn. Code Ann. § 5-5-102(b) by adding the following language: “Each county legislative body may establish a minimum period of residency within the district as a condition of seeking election to such office.”¹ The first paragraph of Article VII, Section 1 of the Tennessee Constitution provides the following:

The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property. Their qualifications and duties shall be prescribed by the General Assembly. Any officer shall be removed for malfeasance or neglect of duty as prescribed by the General Assembly.

Where the Tennessee Constitution specifically vests with the General Assembly a certain duty

¹Under present law, a candidate for the county legislative body need only be a resident and qualified voter of the county legislative district 29 days prior to the general election for that office. *See* Op. Tenn. Atty. Gen. No. 78-252 (June 19, 1978).

and/or power, the General Assembly cannot constitutionally delegate that power to another entity. For example, in *Chambers v. Marcum*, 195 Tenn. 1, 10, 255 S.W.2d 1, 5 (1953), the Tennessee Supreme Court held that where Article VI, Section 7 of the Tennessee Constitution² vested in the legislature the power to ascertain the compensation of judges, that power could not be delegated to the county quarterly court. In particular, the Court stated that “Under Article 6, Section 7 of the Constitution of Tennessee the power to ascertain and fix the compensation of County Judges is vested in the Legislature, and cannot be delegated to County Courts or any other body.” *Id.*

Likewise, the power to set the qualifications for candidates for county legislative body is vested in the General Assembly under Article VII, Section 1 of the Tennessee Constitution, *i.e.*, “qualifications . . . shall be prescribed by the General Assembly.” That duty cannot be delegated to the county legislative body or any other entity. HB 3162/SB 3090 is an attempt to delegate the General Assembly’s duty under Article VII, Section 1 of the Tennessee Constitution, and if enacted, would constitute an unconstitutional delegation in violation of Article VII, Section 1 of the Tennessee Constitution.

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²Article VI, Section 7 of the Tennessee Constitution provides that “[t]he Judges of the Supreme or Inferior Courts, shall, at stated times, receive compensation for their services, to be ascertained by law. . .”